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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,242	08/01/2003	William E. Stafford	BP2525	2452
51472 7590 10/16/2008 GARLICK HARRISON & MARKISON P.O. BOX 160727 AUSTIN, TX 78716-0727				
EXAMINER				
SWEARINGEN, JEFFREY R				
ART UNIT		PAPER NUMBER		
2445				
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/633,242

Applicant(s)

STAFFORD ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.
2. The claims as currently written perform no function other than channel hopping.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Kraml et al. (US 6,490,297).

5. In regard to claim 1, 8, 14, 20, 24, 29, Kraml disclosed:

receiving a scan channel request of a plurality of channels that are in accordance with the network interface protocol, wherein each of the plurality of channels have a different associated radio frequency (RF) signal; column 6, lines 15-35

determining whether an Internet packet is being received via one of the plurality of channels when the channel scan request is received; column 6, lines 15-35, whether the communication application successfully initialized

when the Internet packet is being received when the channel scan request is received, scanning at least one other channel of the plurality of channels, but less than all of the plurality of channels; column 6, lines 15-35

after scanning the at least one other channel, tuning to the one of the plurality of channels and transmitting at least one outbound Internet packet; and column 6, lines 15-35

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scanning at least another channel of the plurality of channels. column 6, lines 15-35

6. In regard to claim 2, 9, Kraml disclosed:

periodically receiving the channel scan request from a host device to determine whether another one of the plurality of channels contains data of interest to the host device. column 6, lines 1-13

7. In regard to claim 3, 10, 16, 25, Kraml disclosed:

determining that a source of the Internet packet and a destination of the Internet packet have established a Transmission Control Protocol (TCP) connection. Column 6, lines 14-35; column 4, lines 30-42

8. In regard to claim 4, Kraml disclosed:

the Internet packet is formatted in accordance with an Internet Protocol (IP), such that the Internet interface protocol is in accordance with a TCP/IP protocol. Column 4, lines 30-42

9. In regard to claim 5, 17, 26, Kraml disclosed:

*determining whether each of the plurality of channels have been scanned; column 5, lines 29-67
when each of the plurality of channels have not been scanned, tuning to the one of the plurality of channels to transmit at least one further Internet packet; and column 5, lines 29-67*

continuing between scanning channels of the plurality of channels and tuning to the one of the plurality of channels until each of the plurality of channels has been scanned. Column 5, lines 29-67

10. In regard to claim 6, 13, 18, 23, 27, 32, Kraml disclosed:

the network interface protocol is in accordance with at least one of IEEE 802.11a, IEEE 802.11b, and IEEE 802.11g. Inherent to the use of the protocols in column 4, lines 34-36. Inherency further supported by developing a high speed wireless network in column 1, lines 18-21, and the reference to any wireless link in column 2, line 6. Furthermore, stating that a protocol is "in accordance with" an IEEE standard does not mean that the protocol uses an IEEE standard.

11. In regard to claim 7, 12, 19, 22, 28, 31, Kraml disclosed:

receiving at least one additional Internet packet. Column 6, lines 15-35

12. In regard to claim 11, 21, 30, Kraml disclosed:

iteratively hopping between scanning one of the other channels and the channel supporting the TCP connection until each of the other channels has been scanned, wherein, during a time when tuned to the channel supporting the TCP connection, at least one datagram is transmitted. Column 6, lines 1-36

13. In regard to claim 15, Kraml disclosed:

the memory further comprises operational instructions corresponding to an operating system of a computer, wherein the transport application is included in the operating system. Inherent to the use of the protocols in column 4, lines 30-42. An operating system would necessarily include instructions for a transport application, since the transport application could not function at any other level outside of the computer according to the OSI model.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Farley et al. US 6,816,732

16. Swartz et al. US 6,330,244

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-3921. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey R. Swearingen
Examiner
Art Unit 2445

/J. R. S./
Examiner, Art Unit 2445

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2445